

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

JOHN FRANCIS CREWS and TASSIE
KAY CREWS,

Plaintiffs,

vs.

SARA LEE CORPORATION; SARA
LEE CORPORATION ERISA
APPEALS COMMITTEE; SARA LEE
CORPORATION EMPLOYEE
HEALTH BENEFIT PLAN; and
GREAT-WEST HEALTHCARE, INC.,

Defendants.

No. **08-CV-113-LRR**

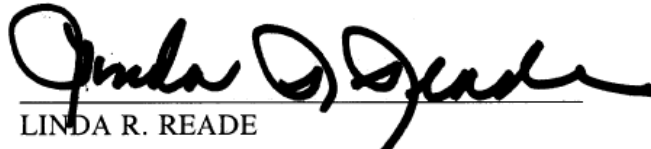
ORDER

Defendants' Motion to Dismiss (docket no. 18) is **GRANTED**. In their Resistance (docket no. 20), Plaintiffs fail to discuss or cite any legal authority to shed doubt on Defendants' well-briefed argument that Count I of the Amended Complaint (docket no. 16) is completely preempted, pursuant to 29 U.S.C. § 1132(a)(1)(B). Accordingly, Count I is **DISMISSED WITH PREJUDICE**. *See, e.g., United States v. Mendoza-Gonzalez*, 520 F.3d 912, 918 n.4 (8th Cir. 2008) (finding failure to cite legal authority was grounds for waiver of argument); *Bad Ass Coffee Co. of Hi. v. Bad Ass Coffee Ltd. P'ship*, 25 F. App'x 738, 744 (10th Cir. 2001) (citing *Rapid Transit Lines, Inc. v. Wichita Developers, Inc.*, 435 F.2d 850, 852 (10th Cir. 1970)) ("[C]itation of but one authority, and that of no pertinence, suggests either that there is no authority to sustain its position or that it expects the court to do its research.")). In any event, the court holds ERISA completely preempts Iowa Code § 514C.1 (2007). Plaintiffs' claims under § 514C.1 clearly "relate to" an ERISA plan insofar as they are premised upon such plan's existence. *See, e.g., Estes v. Fed. Express Corp.*, 417 F.3d 870, 872 (8th Cir. 2005).

This case shall proceed under Local Rule 16.i in the normal course. The parties shall submit a new proposed scheduling order to the court **on or before April 8, 2009**. Plaintiffs' jury demand in the Amended Complaint (docket no. 16) is **STRICKEN** and the case is **REMOVED** from the court's trial calendar. The previously filed Scheduling Order and Discovery Plan (docket no. 25) and Trial Management Order (docket no. 26) are **VACATED**. "There is no right to a jury trial under ERISA." *Langlie v. Onan Corp.*, 192 F.3d 1137, 1141 (8th Cir. 1999).

IT IS SO ORDERED.

DATED this 31st day of March, 2009.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA